

REMARKS

This application has been carefully reviewed in light of the Examiner's letter dated October 18, 2004.

Claim 1 has been amended to include the limitations of Claim 4, and Claim 4 has been canceled.

The Examiner has rejected Claims 1 and 10 on Mansell-Phayre patent number 1,412,126, which is a *display standard for hats*. It has absolutely nothing in common with a swing training device and, as such, it is believed that even if it were structurally comparable, there would be no basis whatsoever to believe that anyone skilled in the art of either playing baseball or developing a swing training device for baseball players would even remotely consider such a device.

As an aside, a swing training device is not merely the environment of the invention, but a limitation, as evidenced by the reference to the bat. It is in fact, what gives life, meaning and vitality to the claim. See *Catilina Mktg. Int'l v. Coolsavings.com, Inc.*, 289 F.3d 801 (Fed. Cir. 2002).

Beyond the foregoing, it is not structurally comparable and, as is clear in *Transclean Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, 1370. 62 U.S.P.Q.2d (BNA) 1865 (Fed. Cir. 2002), a relatively recent Federal Circuit case, in which it is opined that for a reference to be anticipating, it must have each and every limitation either expressly or inherently in that reference.

In Mansell-Phayre, as one example, the Examiner found, inter alia, the standards circumscribing an arc, and that is simply not the case. In truth and in fact, the standards are in line and for that reason alone, in addition to several others, could not reasonably be considered as a swing training device for baseball players "for teaching the proper position of the bat during the swing . . ." (Claim 1).

Indeed, and contrary to the Examiner's finding, the second standard located at mid-point would, in fact, preclude the batter from standing in a proper batting posture, since it would be right in the batter's face. That is, again, presuming that the structure is there, and it is contended that it is not.

Claim 1, and all of the claims currently remaining in the application, call for a swing training device for baseball players. It further calls for a series of strategically positioned standards (made of soft, pliable material, which define an arc, which arc defines the proper position for batting during various parts of the swing). Such structure is not found in the cited references and, in fact, simply could not serve in that capacity.

Moving to the next argument, Claims 1, 6 through 8, 10, 11 and 13 have also been rejected as being anticipated under 35 U.S.C. 102 by Oppenheimer patent 2,094,810, *another hat rack*. The arguments put forth with respect to Mansell-Phayre apply equally to Oppenheimer, which is a rigid structure having four equally spaced standards for the receipt and display of hats about a central frame. In no sense would Oppenheimer be appropriate, nor would it ever be considered as a swing

training device for baseball players. In truth and in fact, it does not provide a strategically positioned standard circumscribing an arc defining the proper position of the bat during various parts of the swing. The term "arc" is not mysterious. In any reasonable definition, it is coincident with arch and references a part of a circle. Neither of these cited references even remotely circumscribes an arcuate path, nor could they.

Finally, the Examiner attempts to obviate the invention under 35 U.S.C. 103(a) as being unpatentable over Mansell-Phayre. The issue of obviousness raises the question of motivation. Simply stated, would one skilled in the art be motivated to look at either Mansell-Phayre or Oppenheimer in attempting to determine whether the claimed invention would have been obvious at the time it was made? We believe the answer is clearly that they would not.

The fields to which Oppenheimer and Mansell-Phayre are directed are so clearly far removed from a batting device, that the two fields of inventive effort would be considered inapposite under any circumstances. Even though the Examiner has not technically combined references, clearly the concept is that there has to be some reason why one skilled in the baseball art would look to a hat rack for inspiration. No such inspiration can be found here. See *In Re Geiger*, 815 F.2d 686, 2 U.S.P.Q.2d 1276 (Fed. Cir. 1978).

The Examiner has indicated the allowability of Claim 4, and the limitations of Claim 4 have now been built into Claim 1, as amended, rendering, in

Applicant's view, Claim 1 as allowable. Moreover, all of the claims dependent upon Claim 1, either directly or in combination with other claims, are believed to be allowable, and such allowance is respectfully requested.

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Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dennis B. Haase', with a stylized, flowing script.

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